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April 17, 2023

FILED ECF

Hon. Nicholas G. Garaufis
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Room 1426S
Brooklyn, NY 11201

Re: *U.S. ex rel. Doe v. Spectra Holdco LLC et al.*
No. 17-cv-2732

Dear Judge Garaufis:

We represent Relator John Doe in the above-captioned case. Pursuant to the Court's Individual Rule Rule V(A)(2)(a), Relator respectfully submits this letter to respond briefly to the issues raised in Defendants' December 23, 2022 letter requesting a pre-motion conference with respect to a proposed motion to dismiss. Your Honor has scheduled this conference for April 19, 2023.

As accurately described in Defendants' letter, Relator's Amended Complaint comprises *qui tam* claims brought pursuant to the federal and certain state False Claims Acts, and a claim asserting that Defendants retaliated against him in violation of the federal False Claims Act.

Relator concedes that his *qui tam* claims are likely barred under the "first to file" rule, as Defendants contend in their letter. Unbeknownst to Relator at the time he filed this lawsuit, another relator had already filed a lawsuit in substance alleging the same wrongdoing by Defendants, which case is pending before this Court (*U.S. ex rel. YNKDY-2 v. Shiel Medical Laboratory et al.*, No. 16-cv-1090). Accordingly, Relator believes that litigating the "first to file" issue would be fruitless, and potentially lacking good faith.

Nonetheless, Relator respectfully submits that his retaliation claim is meritorious, notwithstanding Defendants' stated argument to the contrary. However, again to avoid needless litigation, Relator intends to seek the Court's leave to again amend his complaint to further bolster his retaliation claim.

Relator's proposed Second Amended Complaint would omit Relator's *qui tam* claims (which would be dismissed with prejudice as to the Relator, and without prejudice as to the Government) and also name the Relator rather than

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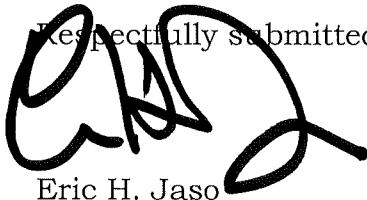
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continuing to proceed as a John Doe (Relator's counsel has already revealed his identity to Defendants).¹ Relator's counsel has advised counsel for the United States (AUSA Rachel Balaban and DOJ Trial Attorney Elizabeth Strawn) of his intentions in this regard, and while they do not object to this proposed amendment, they will require sufficient time to obtain supervisory approval for Relator to dismiss the *qui tam* claims.

Accordingly, Relator respectfully requests that the Court permit him to seek leave to amend his Complaint in lieu of opposing Defendants' requested motion to dismiss, and to set an appropriate schedule.

Respectfully submitted,



Eric H. Jaso

¹ In their December 23 letter, Defendants assert that Relator's proceeding as a John Doe separately warrants dismissal. Relator's proceeding under his given name in the Second Amended Complaint would moot this argument.